

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to the Estate of Claimant [REDACTED]¹
represented by [REDACTED]

in re Account of *E. William Neustadt Co. Ltd.*

Claim Number: 600892/MBC²

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Erich William Jaroslav Neustadt (the “Account Owner”) at the Zurich and London branches of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the owner of the Account Owner as her husband, Erich William Jaroslav Neustadt, who was born on 27 April 1905 in Prague, Czechoslovakia, and who married the Claimant, [REDACTED], née [REDACTED], on 18 April 1939. According to the Claimant, Erich Neustadt, who was Jewish, resided with her in Prague at Myslikova 5, where he was registered with the Prague Council of Jews. The Claimant stated that, prior to the Second World War, her husband owned a textile import business that imported, among other things, woolen underwear from Switzerland. In this capacity, her husband frequently traveled to Switzerland. The Claimant indicated that there were monies deposited in the Zurich branch of the Bank, and those funds were transferred in 1938 or 1939 to Erich Neustadt’s account at the London branch of the Bank. The Claimant recalled discussions about the imminent liquidation of Erich Neustadt’s

¹ [REDACTED] originally filed a claim to the account of her late first husband, Erich William Jaroslav Neustadt. [REDACTED] passed away on 24 May 2000. The heirs of [REDACTED], collectively referred to as the Estate of [REDACTED], have assumed this claim. The executrix of her estate is [REDACTED], who is represented by [REDACTED].

² The Claimant submitted a claim, numbered B-00698, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department on 26 January 1998. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600892.

firm in Czechoslovakia and the establishment of an office in London, since the political situation for Jews in Czechoslovakia was becoming more dangerous. The Claimant stated that with the help of Fritz E. Oppenheimer, a London lawyer, a London office was established and the firm continued to trade in wool yarn. The Claimant stated that on 20 November 1942, she and her husband were deported to the Theresienstadt concentration camp on transport Cc-914. The Claimant stated that her husband was then deported on 28 September 1944, under transport number Ek-1855, to Auschwitz, where he perished. The Claimant stated that she survived Theresienstadt and immigrated to the United States at the end of the Second World War. The Claimant stated that her husband had one sister, [REDACTED], who did not survive the Second World War.

The Claimant stated that when she immigrated to the United States in February 1948, she traveled via London in order to inquire about her late husband's accounts at the Bank. However, according to the Claimant, the Bank denied the existence of such accounts. The Claimant indicated that on 13 March 1948 she married [REDACTED], who died on 5 March 1997. In support of her claim, the Claimant submitted the marriage certificate from her marriage to Erich Neustadtl and a certificate provided by the Bohemian Jewish Communities documenting his last address in Prague, his deportation to Theresienstadt and subsequent deportation to Auschwitz.

The Claimant was born on 3 July 1908 in Lubenec, Czechoslovakia, and died on 24 May 2000 in New York, New York. The executrix of the Claimant's estate submitted the Claimant's death certificate as well as letters testamentary.

Information Available in the Bank Record

The bank record consists of microfilmed copy of an account statement that reflects entries for 1940 and 1950. According to this record, the Account Owner was *E. William Neustadtl Co. Ltd.* of London. The bank record does not indicate the type of account that the Account Owner held. The record contains several entries from the year 1940, but the entries themselves, including those regarding the value of the account and the currency in which it was held are illegible. The bank record does not show when the account at issue was closed or to whom it was paid. There is no evidence in the bank record that the Account Owner or its successors in interest closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name of her husband and his company's location match unpublished information about the Account Owner's name and location contained in the bank record. In support of her claim, the Claimant submitted documents, including her marriage certificate and a certificate issued by the Bohemian Jewish Communities documenting her late husband's last address in Prague, his deportation to Theresienstadt and subsequent deportation to Auschwitz. The CRT notes that the Claimant has

identified the name of an Account Owner that was not published on the February 2001 list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has not based her present claim on the fact that an individual or entity identified on the ICEP list as owning a Swiss bank account bears the same name as her husband, but rather on her personal knowledge of a direct family relationship and business. It also indicates that the Claimant had reason to believe that her husband or her husband’s company owned a Swiss bank account. This supports the credibility of the information provided by the Claimant.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED], and indicates that he was born on 27 April 1905 in Czechoslovakia, which matches the information about the owner of the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the owner of the Account Owner was Jewish and was deported from Prague to Theresienstadt and then to Auschwitz where he perished.

Moreover, the CRT notes that the database discussed above containing the names of victims of Nazi persecution includes a person named [REDACTED], and indicates that he was born on 27 April 1905 in Czechoslovakia, which matches the information about the owner of the Account Owner provided by the Claimant.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents including her marriage certificate, demonstrating that the owner of the Account Owner was her husband. There is no information to indicate that the Account Owner has other successors in interest.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”) (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, or its successors in interest. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their successors in interest received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her husband's company, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor its successors in interest received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the investigation carried out pursuant to the instructions of ICEP (the "ICEP Investigation"), in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Scope of the Award

The executrix of the Claimant's estate and/or her representative should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on the Claimant's claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, see Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, see Bergier Final Report at 450 -51, and possibly Romania as well, see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. See Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." Id. at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . .", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. See In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).